

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BRECK SMITH,

Petitioner,

vs.

ANTHONY SCILLIA, *et al.*,

Respondents.

2:10-CV-01596-PMP-GWF

ORDER

This is a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in which petitioner, a state prisoner, is proceeding *pro se*. On October 30, 2011, petitioner filed a motion for an extension of time to file his reply to the answer to the petition (ECF No. 30) and a motion for appointment of counsel (ECF No. 31).

The motion for counsel shall be denied. As the Court noted in denying a previous motion for counsel, there is no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993). The decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986), *cert. denied*, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), *cert. denied*, 469 U.S. 838 (1984). However, counsel must be appointed if the complexities of the case are such that denial of counsel would amount to a denial of due process, and where the petitioner is a person of such limited education as to be incapable of fairly presenting his claims. See *Chaney*, 801 F.2d at 1196; *see also Hawkins v. Bennett*, 423 F.2d 948 (8th Cir. 1970). Petitioner can make use of the law library and the assistance of prison law clerks. He has been granted sufficient time to address the issues and no counsel is warranted.

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1 Good cause appearing, petitioner's motion for time (ECF No. 30) is **GRANTED**. Petitioner is
2 granted to and including December 11, 2011, to file his reply to the answer. The motion for counsel
3 (ECF No. 31) is **DENIED**.

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5 DATED: November 8, 2011.

A handwritten signature in black ink, appearing to read "Philip M. Pro", with a long horizontal stroke extending to the right.

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8 PHILIP M. PRO
United States District Judge
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